



H.R. 1427 - Federal Housing Finance Reform Act of 2007

Floor Situation

H.R. 1427 is being considered on the floor under a modified rule.

The Rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Financial Services.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Makes in order only those amendments that are pre-printed in the *Congressional Record* or are pro forma amendments for the purpose of debate. (See Amendments section below for details)
- Provides for one motion to recommit with instructions.

This legislation was introduced by Representative Barney Frank (D-MA) on March 9, 2007. The bill was ordered reported from the Financial Services Committee, as amended, by a recorded vote of 45 – 19 on May 9, 2007. ([FC-37](#))

H.R. 1427 is expected to be considered on the floor on May 17, 2007.

Executive Summary

The Federal Housing Finance Reform Act of 2007 would abolish OFHEO and establish an independent agency (the Federal Housing Finance Agency) to provide the regulatory authority to establish rules for safe and sound, mission-compliant operation of the GSEs' portfolios, revise approval standards, and provide for mandatory receivership under certain conditions if the GSE is critically undercapitalized. Major provisions within the bill include an affordable housing fund, portfolio limits, and conforming loan limits.

Affordable Housing Fund

The affordable housing fund would support home ownership among very low- and extremely low-income families, to increase investment in housing in low-income and economically distressed areas, and to increase and preserve the supply of rental and owner-occupied housing for very low- and extremely low-income families. Each enterprise would be required to allocate annually to the fund 1.2 basis points (0.012%) of its average total mortgage portfolio during the preceding year.

Portfolio Limits

Both Fannie and Freddie hold large portfolios of mortgages and mortgage-backed securities. H.R. 1427 authorizes the director of the new agency to monitor portfolios, and have the authority to direct an enterprise to acquire or dispose of any asset, without requiring a determination that such an action is consistent with the safe and sound operation of the enterprise.

Conforming Loan Limits

Current law sets a limit on the size of mortgages that Fannie and Freddie can buy. H.R. 1427 would raise the conforming loan limit in metropolitan areas where the median home price exceeds the current limit. In those areas, the limit would be set at the median home price.

Background

The Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Bank System (FHLB System) were created as government-sponsored enterprises (GSEs) to improve the availability of credit to finance home purchases, enabling the private market to more effectively meet the credit needs of American families.

Fannie and Freddie provide for and support a secondary market for mortgage loans and the FHLBs provide loans that allow their retail financial institution members to originate loans for housing, community, and economic development and to hold loans they cannot sell in the secondary market. Their "government-sponsored" nature gives certain advantages over their purely private competitors. As a result, their operations have expanded rapidly over the years and play critical roles in the residential mortgage market.

In 1992, Congress established the Office of Federal Housing Enterprise Oversight (OFHEO), an agency within HUD, to oversee the financial safety and soundness of Freddie and Fannie. OFHEO is authorized to set capital requirements, conduct annual risk-based examinations, and generally enforce compliance with safety and soundness standards.

Recently, Freddie and Fannie have experienced accounting scandals that have negatively impacted their bottom lines by billions of dollars. In 2003, Freddie Mac announced that it had understated previous earnings reports and would be making major revisions to its financial statements for 2002 and earlier years. Freddie Mac revised its earnings in November of 2003 for 2002 and earlier years upward by \$5.0 billion. OFHEO

announced in 2004 that there were similar problems at Fannie Mae. In December 2006, Fannie Mae issued a restatement, which reduced reported earnings for 2001-2004 by \$6.3 billion. Because the combined portfolios of Fannie and Freddie are worth approximately \$1.5 trillion, federal regulators and Congress have expressed a heightened interest in the regulation of Fannie and Freddie, whose stocks are traded on the New York Stock Exchange.

With the rapid subsequent growth of the GSEs, and major accounting scandals at both Fannie and Freddie, the effectiveness of current regulation has been widely questioned. Although improving supervision of Fannie Mae and Freddie Mac is the major focus, regulatory reform also involves the 12 Federal Home Loan Banks, which comprise one collective GSE. The Federal Home Loan Banks lend to lenders -- their member banks -- primarily for housing, but also for many other purposes. Several legislative proposals considered in the 108th and 109th Congresses addressed GSE regulatory reform, but none was enacted. Under current reform proposals, they would be brought under a single regulatory umbrella with Fannie and Freddie.

H.R. 1427 would abolish OFHEO and establish an independent agency to oversee the GSEs, with enhanced safety and soundness, disclosure, and enforcement tools. H.R. 1427 is also similar to H.R. 1461, which was introduced in the 109th Congress by Rep. Richard Baker (R-LA) and passed the House by a vote of 331-90 but did not receive consideration in the Senate.

H R 1461 RECORDED VOTE 26-Oct-2005 5:36 PM

QUESTION: On Passage

BILL TITLE: Federal Housing Finance Reform Act

	<u>AYES</u>	<u>NOES</u>	PRES	<u>NV</u>
REPUBLICAN	209	15		6
DEMOCRATIC	122	74		6
INDEPENDENT		1		
TOTALS	331	90		12

Summary

**The term `regulated entity' means the Federal National Mortgage Association (Fannie Mae) and any affiliate thereof; the Federal Home Loan Mortgage Corporation (Freddie Mac) and any affiliate thereof; and each Federal home loan bank.*

**The term `regulated entity-affiliated party' means any director, officer, employee, or agent for, a regulated entity, or controlling shareholder of an enterprise; any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, except that a*

shareholder of a regulated entity shall not be considered to have participated in the affairs of that regulated entity solely by reason of being a member or customer of the regulated entity; and any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if the independent contractor knowingly or recklessly participates in any violation of any law or regulation; any breach of fiduciary duty; or any unsafe or unsound practice.

**The term `Federal home loan bank' means a bank established under the authority of the Federal Home Loan Bank Act.*

**The term `Agency' means the Federal Housing Finance Agency.*

**The term `Director' means the Director of the Federal Housing Finance Agency.*

**The term `authorizing statutes' means the Federal National Mortgage Association Charter Act; the Federal Home Loan Mortgage Corporation Act; and the Federal Home Loan Bank Act.*

**The term `Board' means the Federal Housing Enterprise Board.*

TITLE I – REFORM OF REGULATION OF ENTERPRISES AND FEDERAL HOME LOAN BANKS

Subtitle A – Improvement of Safety and Soundness

Establishment of the Federal Housing Finance Agency (Section 101)

- Creates the Federal Housing Finance Agency (FHFA) as an independent agency of the Federal Government, establishing that the Director of the FHFA has supervisory and regulatory authority over Fannie Mae, Freddie Mac, and Federal Home Loan Banks.
- Requires the Director to be appointed by the President and approved by the Senate for a five-year term that maybe removed by the President only for cause. Upon the expiration of a term, a Director may serve until a successor has been appointed.
- Creates a Deputy Director of the Division of Enterprise Regulation, the Division of Federal Home Loan Bank Regulation, and Deputy Director for Housing, appointed by the Director.
- Establishes that the Director and each of the Deputy Directors may not:
 - have any direct or indirect financial interest in any regulated entity or regulated entity-affiliated party;
 - hold any office, position, or employment in any regulated entity or regulated entity-affiliated party; or

- have served as an executive officer or director of any regulated entity, or regulated entity-affiliated party, at any time during the 3-year period ending on the date of appointment of such individual as Director or Deputy Director.
- Requires the Director to establish the position of the Ombudsman in the Agency. The Ombudsman will consider complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity.

Duties and Authorities of Director (Section 102)

- Establishes that the principal duties of the Director are to oversee the safe and sound operations of each regulated entity and any joint office of the FHLB.
- Authorizes the Director to review and reject any acquisition or transfer of a controlling interest in an enterprise.
- Requires the Director to establish standards for each regulated entity relating to proper adequacy of liquidity and reserves and management of risk and credit.
- Authorizes the Director to request from the regulated entity a plan that specifies action to be taken to correct deficiency, if the Director determines that a regulated entity fails to meet any standard.
- Establishes that, if a regulated entity fails to submit an acceptable plan within the time allowed, or fails to implement a plan accepted by the Director, the Director can require the regulated entity to correct the deficiency and take appropriate actions against the entity until the deficiencies are corrected.

Federal Housing Enterprise Board (Sec 103)

- Establishes that the Federal Housing Enterprise Board (FHEB) is authorized to advise the Director on overall strategies and policies.
- Authorizes that the Board be comprised of 5 members, not more than three of which are of the same political party. The membership shall be –
 - the Secretary of the Treasury;
 - the Secretary of HUD;
 - the Director, who will serve as the Chairperson of the Board; and
 - two members who will be appointed by the President for a four-year term, with the approval of the Senate, who are experts or experienced in the field of financial services, housing finance, affordable housing, or mortgage lending.
- The Board will meet upon the notice of the Director at least once every three months, and will testify annually before Congress.

Authority to Require Reports by Regulated Entities (Section 104)

- Requires the Director to require a regulated entity to submit a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument or suspects a possible fraud relating to a purchase or sale of any loan or financial instrument.

Disclosure of Income and Charitable Contributions by Enterprises (Section 105)

- This section authorizes the Director to require each enterprise to submit a public report annually containing –
 - the total value of contributions made by the enterprise to non-profit organizations during its previous fiscal year;
 - the name of any organization and the value of contributions, if the value of contributions made by the enterprise to any nonprofit organization during its previous fiscal year exceeds the designated amount.
 - identification of each contribution whose value exceeds the designated amount that were made by the enterprise during the enterprise's previous fiscal year to any nonprofit organization of which a director, officer, or controlling person of the enterprise, or a spouse, was a director or trustee, the name of such nonprofit organization, and the value of the contribution.

Assessments (Section 106)

- Authorizes the Director to establish and collect annual assessments from the regulated entities to provide for reasonable costs and expenses of the Agency.
- Authorizes increased costs of regulation at the discretion of, or as authorized by, the Director.
- Authorizes the Director to provide to the Director of the OMB copies of the Director's budget and financial management plans; prepare an annual statement of assets, liabilities and surplus or deficit; a statement of income and expenses; and a statement of sources and application of funds; provide to the Comptroller General an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Agency; and be audited annually by the GAO.

Prohibition and Withholding of Executive Compensation (Section 108)

- Authorizes the Director to take into consideration any factors the Director considers relevant, including any wrongdoing on the part of the executive officer, such as any fraudulent act or omission, breach of trust or fiduciary duty, violation of law, rule, regulation, order, or written agreement, and insider abuse with respect to the regulated entity.
- Mandates that Fannie Mae, Freddie Mac, and FHLB are not to transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director.

Inclusion of Minorities and Women; Diversity in Agency Workforce (Section 110)

- Requires each regulated entity to establish an Office of Minority and Women Inclusion, or to designate an office of the entity responsible for carrying out this section, and to develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities and women, and minority- and women-owned businesses in all business and activities of the regulated entity at all levels.
- Requires the Agency to take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States, which shall include –
 - heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women’s colleges, and colleges that typically serve majority minority populations;
 - sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;
 - partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and
 - where feasible, partnering with inner-city high schools, girls’ high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

Risk-Based Capital Requirements (Section 113)

- Requires the Director, by regulation, to establish risk-based capital requirements for the enterprises to ensure that the enterprises operate in a safe and sound manner, maintaining sufficient capital and reserves to support the risks that arise in the operations and management of the enterprises.
- Authorizes the Director, by regulation, to establish risk-based capital standards for the Federal home loan banks to ensure that the Federal home loan banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal home loan banks.

Minimum and Critical Capital Levels (Sec 114)

- Establishes that the minimum capital level for each Federal home loan bank shall be the minimum capital required to be maintained to comply with the leverage requirement for the bank.
- Authorizes the Director to establish a minimum capital level for the enterprises, for the Federal home loan banks, or for both the enterprises and the banks, that is higher than the level specified for the enterprises or the level specified for the Federal home loan banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

- Authorizes the Director to increase the minimum capital level for a regulated entity on a temporary basis for such period as the Director may provide if the Director determines that a regulated entity has violated any of the standards established and that an unsafe and unsound condition exists. A temporary increase in minimum capital imposed on a regulated entity will not remain in place for longer than 6 months unless the Director makes a renewed determination of the existence of an unsafe and unsound condition.
- Requires the Director to periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities. The Director has the authority to rescind any temporary minimum capital level increase if it is determined that the circumstances or facts justifying the temporary increase are no longer present.

Reviews of and Authority Over Enterprise Assets and Liabilities (Section 115)

- Authorizes the Director to establish standards by which portfolio holdings, or rate of growth of the portfolio holdings, of the enterprises will be deemed to be consistent with the mission and the safe and sound operations of the enterprise, considering:
 - the size or growth of the mortgage market;
 - the need for the portfolio in maintaining liquidity or stability of the secondary mortgage market;
 - the need for the portfolio to directly support the affordable housing mission of the enterprises;
 - the liquidity needs of the enterprises;
 - any potential risks posed by the nature of the portfolio holdings; and
 - any additional factors the Director determines to be necessary.
- Allows the Director to make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

Corporate Governance of Enterprises (Section 116)

- Requires that a majority of the board of directors of each enterprise be independent board members, as defined under rules set forth by the New York Stock Exchange.
- Requires the board of directors of an enterprise to meet at least eight times a year and not less than once a calendar quarter.
- Requires the non-management directors of an enterprise to meet at regularly scheduled executive sessions without management participation.
- Requires a quorum of the board of directors of an enterprise to meet at least a majority of the seated board of directors and a board member may not vote by proxy.

- Requires that each enterprise must provide for the establishment of the following committees of the board of directors: Audit Committee, Compensation Committee, Nominating/Corporate Governance Committee. Such committees must be in compliance with the SEC and NYSE rules.
- The Compensation of board members, executive officers, and employees of an enterprise –
 - must not be in excess of what is reasonable or appropriate;
 - must be consistent with the long-term goals of the enterprise; and
 - must not focus solely on earnings performance, but should take into account risk management, operational stability, and legal and regulatory.
- Authorizes an enterprise to establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the enterprise to discharge their duties and responsibilities, and requires at least once every three years for an enterprise to review the adequacy of its code of conduct and.
- Prohibits an enterprise from extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan to or for any board member or executive officer of the enterprise.
- Requires the CEO and CFO of an enterprise to review each quarterly report and annual report issued by the enterprise and for both reports to include disclosure certifications.
- Requires that the lead partner of the external auditor of an enterprise be changed every five years.
- Requires each enterprise to establish a compliance program designed to assure that the enterprise complies with applicable laws, rules, regulations, and internal controls, and is headed by a compliance officer who reports directly to the CEO of the enterprise, and regularly to the board of directors or an appropriate committee of the board of directors.
- Establishes that the risk management program of an enterprise will be headed by a risk management officer who reports directly to the CEO of the enterprise, and regularly to the board of directors or an appropriate committee of the board of directors.
- Authorizes the Director, at their sole discretion, to modify the standards contained in this section, upon written notice of the enterprise.

Required Registration Under Securities Exchange Act of 1934 (Section 117)

- Authorizes each regulated entity to regulate at least one class of the capital stock of such regulated entity, and maintain the registration with the SEC.

Guarantee Fee Study (Section 119)

- Authorizes the Director of the FHFA, in consultation with the heads of the federal banking agencies, no later than 18 months after the enactment of this Act, to submit to Congress a study, concerning the pricing, transparency, and reporting of Freddie Mac, Fannie Mae, and the Federal home loan banks, with regard to guarantee fees, total revenue, costs incurred by the enterprises for providing guarantees, transparency and reporting requirements of other participants in the business of mortgage purchases and securitization, credit risk, and economic value considerations.
- Clarifies that all information of the enterprises or other organization that is confidential or proprietary will be disclosed in this study.

Subtitle B – Improvement of Mission Supervision

Review of Enterprise Products (Section 132)

- Requires each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.
- Establishes that the Director must make the following determinations when considering a request for approval of a product –
 - that the product is in the public interest, consistent with the safety and soundness of the enterprise or the mortgage finance system, and does not materially impair the efficiency of the mortgage finance system.
- Establishes procedures for submitting to the Director a written request for approval of a product and a public comment period during the 30-day period beginning on the date of the publication of a request for approval of a product. The Director will have 30 days after the close of the comment period to approve or deny the request.

Conforming Loan Limits (Section 133)

- Authorizes Fannie Mae and Freddie Mac conforming loan limits for 2007 to not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence; \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that maximum limitations will be adjusted effective January 1 of each year beginning with 2008.
- Authorizes high cost area limits to be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the FHFA, such increase shall apply only to mortgages on which securities issued and sold by the corporation are based.

- Authorizes establishing and maintaining a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises.
- Authorizes a GAO Audit to determine whether the methodology established is an accurate and appropriate means of measuring changes to the national average 1-family house price.
- Requires the Director of the FHFA to conduct a study during the six-month period beginning on the effective date of this Act. The study will determine the effect that restricting the conforming loan limits for high-cost areas only to mortgages on which securities issued and sold by Freddie Mac and Fannie Mae are based would have on the cost to borrowers in such high-cost areas; the effects that such restrictions would have on the availability of mortgages for housing in such high-cost areas; and the extent to which Freddie Mac and Fannie Mae will be able to issue and sell securities based on mortgages for housing located in such high-cost areas.
- No later than the expiration of the six-month period, the Director shall make a determination whether the restriction of conforming loan limits for high-cost areas will result in an increase in the cost to borrowers in such high-cost areas. If the determination is that the cost is to borrowers, the Director may issue an order terminating such restrictions, in whole or in part.
- No later than the expiration of the six-month period, the Director will publish in the Federal Register a report that describes the study and sets forth the conclusions of the study.

Annual Housing Report Regarding Regulated Entities (Section 134)

- Requires the Director to submit a report, no later than October 30 of each year, to the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee, regarding the annual housing goals, primary and secondary multi-family housing mortgage markets, use of alternative credit scoring, and activities involving subprime loans.
- Requires the Director, no later than one year after the effective date, to establish standards by which mortgages purchased and securitized shall be characterized as subprime for the purpose of, and only for the purpose of, complying with the reporting requirement.

Annual Reports by Regulated Entities on Affordable Housing Stock (Section 135)

- Requires regulated changes in entities to facilitate a study on an annual basis to determine the changes in levels of affordable housing inventory in communities throughout the United States to help in applying the formula for the affordable housing program.

- Requires that each annual report be submitted to Congress, and made available to the public.
- Requires the Director to establish requirements for the studies and reports, including deadlines for the submission of the annual report and standards for determining affordable housing.

Revision of Housing Goals (Section 136)

- Requires the Director to establish annual housing goals regarding the mortgage purchases by the enterprises, as follows:
 - three single-family housing goals;
 - a multifamily special affordable housing goal;
 - establishes that upon a preliminary finding by the Director that a pattern of disparities in interest rates with respect to any lender or lenders exists pursuant to the data provided by an enterprise that the Director will:
 - refer the preliminary finding to the appropriate regulatory or enforcement agency for further review;
 - require the enterprise to submit additional data with respect to any lender or lenders to the Director who will submit any additional data to the regulatory or enforcement agency for appropriate action; and
 - require the enterprise to undertake remedial actions, as appropriate.
 - requires the Director to submit to the House Committee on Financial Services and the Senate Banking, Housing, and Urban Affairs Committee a report describing the actions taken, and being taken, by the Director.

Single-Family Housing Goals

- Requires the Director to establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, purchase money mortgages financing owner-occupied and rental housing for –
 - low-income families.
 - families that reside in low-income areas.
 - very low-income families.
- Authorizes the Director to determine whether each enterprise has complied with the single-family housing goals established for such year.
- Authorizes the Director to increase targets for any year to reflect expected changes in market performance.
- Requires within 30 days of making a determination regarding a compliance of an enterprise for a year with a housing goal established and before any public disclosure thereof, the Director to provide notice of the determination to the enterprise of the performance of the enterprise for the year and the targets for the year.

- Requires the Director to provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.
- Requires the Director to consider a mortgagor's income to be income at the time of origination of the mortgage, in monitoring the performance of each enterprise.

Multifamily Special Affordable Housing Goal

- Requires the Director to establish an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing:
 - mortgages that finance dwelling units for low-income families.
 - mortgages that finance dwelling units for very low-income families.
 - mortgages that finance dwelling units assisted by the low-income housing tax credit.
- Requires the Director to establish additional requirements for the purchase by each enterprise of mortgages for multifamily housing projects of a smaller or limited size, which may be based on the number of dwelling units in the project or the amount of the mortgage, or both, and shall include multifamily housing projects of such smaller sizes as are typical among such projects that serve rural areas.
- Requires the Director to give credit toward the achievement of the multifamily special affordable housing goal to dwelling units in multifamily housing that otherwise qualify under such a goal and that are financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, but only of such bonds –
 - are secured by a guarantee of the enterprise; or
 - are not investment grade and are purchased by the enterprise.
- Requires the Director to monitor the performance of each enterprise in meeting the goals established and to evaluate the performance based on –
 - the income of the prospective or actual tenants of the property, where such data is available; or
 - where the data is not available, rent levels affordable to low-income and very low-income families.

A rent level is considered to be affordable for an income category if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

- Requires the Director to determine whether each enterprise has complied with such goals and the additional requirements.

Discretionary Adjustment of Housing Goals

- Authorizes an enterprise to petition the Director in writing at any time during a year to reduce the level of any goal for such year established.

- Authorizes the Director to reduce the level for a goal to such a petition only if –
 - market and economic conditions or the financial condition of the enterprise require such action; or
 - efforts to meet the goal would result in the constraint of liquidity and/or over-investment in certain market segments.
- Requires the Director to make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend a period for 15-days, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.

**The term ‘rural’ and ‘rural area’ as currently defined is revised to include micropolitan areas and tribal trust lands.*

**The term ‘low income area’ means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is low, and includes families of the area median income who reside in minority tracts.*

**The term ‘extremely low-income’ means in the case of owner-occupied units, income not in excess of 30 percent of the area median income, and in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.*

**The term ‘conforming mortgage’ means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar limitation, in effect at the time of such origination.*

Duty to Serve Underserved Markets (Section 137)

- Establishes the duty to undertake activities relating to mortgages for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, and have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.
- Requires the Director to establish a manner for evaluating whether, and the extent to which, the enterprise has complied with the duty to serve underserved markets and for rating the extent of such compliance.
- Requires the Director, in determining whether an enterprise has complied with the duty, to separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified, taking into consideration –
 - the development of loan products and more flexible underwriting guidelines;

- the extent of outreach to qualified loan sellers in each of such underserved markets; and
- the volume of loans purchased in each of the underserved markets.

Monitoring and Enforcing Compliance with Housing Goals (Section 138)

- Authorizes the Director to assign more than 125 percent credit toward achievement of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support housing that meets energy efficiency or other environmental standards that are established by a Federal, State, or local governmental authority with respect to the geographic area where the housing is located or are otherwise widely recognized; or housing that includes a licensed childcare center. The availability of additional credit under shall not be used to increase any housing goal, subgoal, or target established.
- Establishes that if the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established, the Director is required to provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.
- Requires that if the Director finds that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan.
- Requires the Director to review each submission by an enterprise and no later than 30 days after submission, to approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary.
- Authorizes the Director, in addition to ordering a housing plan, issuing cease and desist orders, and ordering civil money penalties, to seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this Act to prohibit the enterprise from initially offering any product or engaging in any new activities, services, undertakings, and offerings and to order the enterprise to suspend products and activities, services, undertakings, and offerings, pending its achievement of the goal.

Affordable Housing Fund (Section 139)

- Authorizes the Director, in consultation with the Secretary of HUD, to establish and manage an affordable housing fund that is funded with amounts allocated by the enterprises.
- Requires each enterprise to allocate to the affordable housing fund in each of the years 2007 through 2011, an amount equal to 1.2 basis points for each dollar of the average total mortgage portfolio of the enterprise during the preceding year.

- Authorizes the Director to temporarily suspend the allocation by an enterprise to the affordable housing fund upon a finding by the Director that such allocations –
 - are contributing, or would contribute, to the financial instability of the enterprise;
 - are causing, or would cause, the enterprise to be classified as undercapitalized; or
 - are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan.
- Establishes a 5-year sunset that enterprises are not required to make allocations to the affordable housing fund in 2012 or in any year thereafter.
- Establishes that no later than June 30, 2011, the Director is required to submit to the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee a report making recommendations on whether the program should be extended or modified.
- Establishes affordable housing needs formulas for 2007:
 - The allocation percentage of the Louisiana Housing Finance Agency is 75 percent.
 - The allocation percentage of the Mississippi Housing Finance Agency is 25 percent.
- Requires the Secretary of HUD to establish a formula to allocate funds to states and federally recognized Indian tribes from the affordable housing fund.
- Requires the Director to determine the formula amount under this section for each grantee.
- Authorizes the Director to determine the amounts available for affordable housing fund grants to grantees in each year to be published in the Federal Registry as a notice that such amounts are available.
- Requires the Director to make a grant from amounts in the affordable housing fund to each grantee in an amount that is equal to the formula amount for the grantee. A grantee may designate a State housing finance agency, housing and community development entity, tribally designated housing entity, or other qualified instrumentality of the grantee to receive such grant amounts.
- Authorizes that for each year that a grantee receives affordable housing fund grant amounts, the grantee is required to establish an allocation plan for the distribution of such grant amounts of the grantee for such year that –
 - is based on priority housing needs, as determined by the grantee in accordance with the regulations established;

- complies with selection of activities funded using affordable housing fund grant amounts;
 - includes performance goals, benchmarks, and timetables for the grantee for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts that comply with the requirement established by the Director.
- Requires a grantee to notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.
- Requires an allocation plan to set forth the requirements for eligible recipients to apply to receive assistance from affordable housing fund, including a requirement that each such application include –
- a description of the eligible activities to be conducted using such assistance; and
 - a certification by the eligible recipient that any housing units will comply with the requirements under this section.
- Authorizes grants to be used, or committed for use, only for activities that –
- are eligible for such use;
 - comply with the applicable allocation plan of the grantee; and
 - are selected for funding by the grantee in accordance with the process and criteria for such selection previously established.
- Authorizes grants to be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, and a faith-based organization) that –
- has demonstrated experience and capacity to conduct an eligible activity as evidenced by its ability to:
 - own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;
 - design, construct or rehabilitate, and market affordable housing for homeownership;
 - provide forms of assistance, such as downpayments, closing costs, or interest-rate buy-downs, for purchasers; or
 - construct related public infrastructure development activities in connection with such housing activities;
 - demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;
 - demonstrates its familiarity with the requirements of any Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

- makes such assurances to the grantee as the Director will, by regulation, require to ensure that the recipient will comply with the requirements of this section during the entire program.
- Authorizes required amount for recorp of the aggregate amount allocated in each year to the affordable housing fund, 25 percent is used as previously provided in the Federal Home Loan Bank Act.
- Requires that any affordable housing funds must be used or committed for use within two years of the grant date or be subject to recapture.
- Requires the Director to establish prohibited uses of affordable housing fund grant amounts which include use for:
 - political activities;
 - advocacy;
 - lobbying, whether directly or through other parties;
 - counseling services;
 - travel expenses; and
 - preparing or providing advice on tax returns.
- Requires the Director to provide that grant amounts may not be used for administrative, outreach, or other costs of the grantee or any recipient of such grantee accounts.
- Requires that not more than 10% of a grant amount be used for administrative costs to carry out the program.
- Requires the Director to develop and maintain a system to ensure that each recipient of assistance from affordable housing funds use such amounts in accordance with this section, and any applicable regulations, requirements or conditions.
- Requires the Director to establish minimum requirements for grantees and recipients, which include appropriate continuing financial and project reporting, record retention, and audit requirements.
- Requires that if any recipient of an affordable housing fund grant determines that any funds were used in a manner that is in violation, the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee and return to the grantee any amounts from the affordable housing fund grant that remain unused or uncommitted for use.
- Authorizes the Director to require each grantee receiving affordable housing fund grant amounts for a year to submit a report, available to the public, to the Director that –
 - describes the activities funded under this section; and

- the manner in which the grantee complied during such year with the allocation plan established previously for the grantee.
- Authorizes that if the Director determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Director is satisfied that there is no longer any such failure to comply, the Director shall –
 - reduce the amount of assistance under this section to the grantee by an amount equal to the amount of the grant which was not used in accordance with this section;
 - require the grantee to repay the Director an amount equal to the amount of the affordable housing fund grant which were not used in accordance with this section;
 - limit the availability of assistance under this section to activities or recipients not affected by such failure to comply; or
 - terminate any assistance under this section to the grantee.
- Requires that the utilization or commitment of amounts from the affordable housing fund is not subject to the risk-based capital requirements.

The term ‘affordable housing fund grant amounts’ means amounts from the affordable housing fund established that are provided to a grantee.

The term ‘grantee’ means – with respect to 2007, the Louisiana Housing Finance Agency and the Mississippi Development Authority; and with respect to the years, other than 2007, each State and each federally recognized Indian tribe.

The term ‘recipient’ means an entity that meets the requirements and receives assistance from a grantee from affordable housing fund grant amounts of the grantee.

The term ‘total mortgage portfolio’ means, with respect to a year, the sum, for all mortgages outstanding during that year in any form, including whole loans, mortgage-backed securities, participation certificates, or other structured securities backed by mortgages, of the dollar amount of the unpaid outstanding principal balances under such mortgages. Such term includes all such mortgages or securitized obligations, whether retained in portfolio, or sold in any form. The Director is authorized to promulgate rules further defining such term as necessary to implement this section and to address market developments.

The term ‘very-low income family’ has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line of the Omnibus Budget Reconciliation Act of 1981.

- Authorizes the Director, in consultation with the Secretary of HUD to issue regulations to carry out this section.

- Authorizes the regulations issued to include –
 - a requirement that the Director ensure that the program of each grantee is audited no less than annually to ensure compliance with this section;
 - authority for the Director to audit, provide for an audit, or otherwise verify a grantee's activities, to ensure compliance with this section;
 - requirements for a process for application to, and selection by, each grants for activities meeting the grantee's priority housing needs to be funded with affordable housing fund grant amounts of the grantee, which shall provide for priority in funding to be based upon-
 - greatest impact;
 - geographic diversity;
 - ability to obligate amounts and undertake activities so funded in a timely manner;
 - in the case of rental housing projects, the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;
 - in the case of rental housing projects, the extent of the duration for which rents will remain affordable;
 - the merits of an applicant's proposed eligible activity; and
 - the extent to which the application makes use of other funding sources;
 - requirements to ensure that amounts provided to a grantee from the affordable housing fund that are used for rental housing are used only for the benefit of extremely low- and very-low income families;
 - limitations on public infrastructure development activities that are eligible for funding with affordable fund grant amounts and requirements for the connection between such activities and housing activities funded; and
 - requirements and standards for establishment, by grantees of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with affordable housing fund grant amounts.

- Requires that if after the enactment of this Act, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, the Director is required in each subsequent year and any remaining years to transfer such affordable housing trust fund the aggregate amount allocated in such year to the affordable housing fund under this section, less any amounts used already.

- Establishes that if the amounts available are insufficient to cover the amount of interest payments, each enterprise shall transfer to the Funding Corporation in each calendar year the amounts allocated for use under this Act.

- Requires the GAO to conduct a study to determine the effects that the affordable housing fund established will have on the availability and affordability of credit for homebuyers, including the effects on credit that Fannie Mae and Freddie Mac make

based on the average total mortgage portfolios, and the extent to which the costs that such allocation requirements will be borne by such entities or will be passed on to homebuyers. No later than the expiration of the one year period beginning on the date of the enactment of this Act, the Comptroller General is required to submit a report to Congress setting forth the results and conclusions of each study.

Consistency with Mission (Section 140)

- Establishes that an enterprise is not authorized to engage in any program or activity that contravenes or is inconsistent with the Fannie Mae Charter Act or the Federal Home Loan Mortgage Corporation Act.

Enforcement (Section 141)

- Authorizes the Director to issue and serve a notice of charges to an enterprise if the Director determines that the enterprise has failed to meet any housing goal established following a written notice and determination of such failure.
- Authorizes the Director to apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, or request that the Attorney General of the United States bring such an action. Authorizes that court to have jurisdiction and power to order and require compliance with such notice or order.
- Authorizes the Director to impose a civil money penalty on an enterprise that has failed to –
 - meet any housing goal established following a written notice and determination;
 - submit a report following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;
 - submit the information required under current law;
 - comply with any provision of this part, or any order, rule or regulation under this part;
 - submit a housing plan within the required period; or
 - comply with a housing plan for the enterprise.
- Establishes that the Director, in determining the penalty, will give consideration to the length of time the enterprise should have to reasonably achieve the goal.

SUBTITLE C – PROMPT CORRECTIVE ACTION

Capital Classifications (Section 151)

- Requires the Director, by regulation to –
 - establish capital classification for the FHLBs;
 - establish criteria for each capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established for the enterprises, with such modifications as the Director

- determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and
 - classify the Federal home loan banks according to such capital classifications.
- Establishes that capital classifications specified are adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.
- Authorizes the Director to reclassify a regulated entity if the Director takes any action previously described for initially reclassifying a regulated entity –
 - as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;
 - as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and
 - as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.
- Requires that a regulated entity will make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized, except that certain restructuring transactions may be permitted by the Director if they improve the financial condition of the entity.

Supervisory Actions Applicable to Undercapitalized Regulated Entities (Section 152)

- Requires the Director to closely monitor the condition of any regulated entity that is classified as undercapitalized.
- Establishes that a regulated entity that is classified as undercapitalized will not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless –
 - the Director has accepted the capital restoration plan of the regulated entity;
 - any increase in total assets is consistent with the plan; and
 - the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.
- Establishes that a regulated entity that is classified as undercapitalized will not acquire any interest in any entity or initially offer any new product or engage in any new activity, service, undertaking, or offering unless –
 - the Director has accepted the capital restoration plan of the regulated entity; or
 - the Director determines that the proposed action will further the purpose of this section.

Supervisory Actions Applicable to Significantly Undercapitalized Regulated Entities (Section 153)

- Authorizes improvement of management through taking one or more of the following actions:
 - order a new election for the board of directors of the regulated entity.

- dismissal of any director or executive officer who has held their office for more than 180 days immediately before the entity became undercapitalized.
 - require the regulated entity to employ qualified executive officers.
- Establishes that a regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director –
- pay any bonus to any executive officer; or
 - provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.

Authority Over Critically Undercapitalized Regulated Entities (Section 154)

- Authorizes the Director to appoint (or the Agency may serve as) a receiver or conservator for a number of specific causes related to financial difficulty and/or violations of law or regulation.
- Establishes powers of conservators or receivers, and procedures for settlement of claims, disposal of assets, and other aspects of liquidation, including judicial review.
- Authorizes the Director to appoint a limited-life regulated entity to deal with the affairs of an entity in default.
- Prohibits a receiver from terminating, revoking, or annulling the charter of a regulated entity.
- Establishes mandatory receivership through requiring the Director to appoint the Agency as a receiver if a regulated entity's assets are (and have been for 30 days) less than its obligations to its creditors, or if the regulated entity has (for 30 days) not been generally paying its debts as they are due.

Subtitle D--Enforcement Actions

Cease-and-Desist Proceedings (Section 161)

- Authorizes the Director to serve a regulated entity or any regulated entity-affiliated party with a notice of cease and desist if it: is engaging or has engaged, or the Director has reasonable cause to believe that they are about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity, or is violating or has violated, or the Director has reasonable cause to believe that they are about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director.
- Establishes that if a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.

Temporary Cease-and-Desist Procedures (Section 162)

- Establishes that whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.
- Authorizes the Director to apply for an injunction (in case of violation or threat of violation, or failure to obey, a temporary cease-and-desist order issued pursuant to this section) to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

Prejudgment Attachment (Section 163)

- Authorizes the courts to freeze assets, funds, or other property of persons subject to civil or administrative actions for violations.

Enforcement and Jurisdiction (Section 164)

- Authorizes the Director to apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

Civil Money Penalties (Section 165)

- Establishes three tiers of fines:
 - \$10,000 per day for violations of orders;
 - \$50,000 per day for recklessly engaging in an unsafe or unsound practice, or a pattern of misconduct or material breach of fiduciary duty with financial gain to the entity or individual; and
 - up to a maximum of \$2 million per day for knowingly engaging in violations, breaches of fiduciary duties, or unsafe or unsound practices that cause substantial losses to a regulated entity.

Removal and Prohibition Authority (Section 166)

- Authorizes the Director, after written notice and opportunity for a hearing, to suspend or remove regulated entity-affiliated parties who have –
 - violated a law, cease-and-desist, or other written order;
 - engaged in an unsafe or unsound practice; or
 - breached fiduciary duty such as –
 - the regulated entity is likely to suffer loss or the enterprise-affiliated party receive financial gain; and

- the unsafe and unsound practice involves personal dishonesty or demonstrates willful and continuing disregard for the safety and soundness of the regulated entity.
- Establishes judicial review of such orders or suspensions.

Criminal Penalty (Section 167)

- Establishes that anyone who, without the prior written approval of the Director, knowingly participates, directly or indirectly, in the conduct of the affairs of any regulated entity, can be fined up to \$1,000,000 and imprisoned for no more than 5 years, or both.

Subpoena Authority (Section 168)

- Authorizes the Director to issue subpoenas.

Subtitle E--General Provisions

Enterprise Boards of Directors (Section 181)

- Eliminates the requirement that five Directors on the boards of Freddie Mac and Fannie Mae have to be appointed by the President.
- Establishes the size of enterprise boards at 13 (reduced from 18), unless the Director determines another number is appropriate, in which case the size of enterprise boards may range between 7 and 15.

Report on Portfolio Operations, Safety and Soundness, and Mission of Enterprises (Section 182)

- Requires that no later than the expiration of the 12-month period beginning on the effective date under section 185, the Director of the FHFA shall submit a report to the Congress which shall include –
 - a description of the portfolio holdings of the enterprises in mortgages (including whole loans and mortgage-backed securities), non-mortgages, and other assets;
 - a description of the risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes), compared with off-balance sheet liabilities of the enterprises (including mortgage-backed securities guaranteed by the enterprises);
 - an analysis of portfolio holdings for safety and soundness purposes;
 - an assessment of whether portfolio holdings fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act; and
 - an analysis of the potential systemic risk implications for the enterprises, the housing and capital markets, and the financial system of portfolio holdings, and whether such holdings should be limited or reduced over time.

Study of Alternative Secondary Market Systems (Section 184)

- Authorizes the Director of the FHFA, in consultation with the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and the Secretary of HUD, to conduct a comprehensive study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance, taking into consideration changes in the structure of financial and housing finance markets and institutions since the creation of Fannie Mae and Freddie Mac.
- Requires the study to –
 - include, among the alternatives to the current secondary market system analyzed –
 - repeal of the chartering Acts for Fannie Mae and Freddie Mac;
 - establishing bank-like mechanisms for granting new charters for limited purpose mortgage securitization entities;
 - permitting the Director of the FHFA to grant new charters for limited purpose mortgage securitization entities, which shall include analyzing the terms on which such charters should be granted, including whether such charters should be sold, or whether such charters and the charters for Fannie Mae and Freddie Mac should be taxed or otherwise assessed a monetary price; and
 - such other alternatives as the Director considers appropriate;
 - examine all of the issues involved in making the transition to a completely private secondary mortgage market system;
 - examine the technological advancements the private sector has made in providing liquidity in the secondary mortgage market and how such advancements have affected liquidity in the secondary mortgage market; and
 - examine how taxpayers would be impacted by each alternative system, including the complete privatization of Fannie Mae and Freddie Mac.
- Requires the Director of the FHFA to submit a report to the Congress on the study not later than the expiration of the 24-month period beginning on the effective date under section 185.

TITLE II--FEDERAL HOME LOAN BANKS

Directors (Section 202)

- Establishes that the management of each FHLB must be vested in a board of 13 directors, who must be citizens of the United States. All directors of a Bank who are not independent directors shall be elected by the members.
- Requires that a majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.
- Requires at least two-fifths of the directors of each Bank to be independent directors, who shall be appointed by the Director of the FHFA from a list of individuals recommended by the FHEB, and shall meet the following criteria:

- each independent director shall be a bona fide resident of the district in which such Bank is located.
 - at least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, community development, economic development, or financial consumer protections.
 - each independent director that is not a public interest director shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.
 - in appointing independent directors of a Bank, the Director shall take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the Bank.
- Authorizes each Federal home loan bank to pay the members of the board of directors reasonable and appropriate compensation.
 - Requires the Director to include, in the annual report submitted to the Congress, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.

Joint Activities of Banks (Section 204)

- Establishes that subject to the regulation of the Director, any two or more FHLBs may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.

Sharing of Information Between Federal Home Loan Banks (Section 205)

- Requires the Director to prescribe such regulations as may be necessary to ensure that each Federal FHLB has access to information that the Bank needs to determine the nature and extent of its joint and several liability. Information sharing concerning a FHLB to any other FHLB for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability does not waive any privilege.

Reorganization of Banks and Voluntary Merger (Section 206)

- Allows any two or more Banks to merge, with the approval of the Director, and the approval of the boards of directors of the Banks involved.

Securities and Exchange Commission Disclosure (Section 207)

- Establishes that the members of the FHLBs are exempt from some SEC reporting regulations with respect to their ownership of, or transactions in, capital stock of the FHLBs.

- Requires the SEC, in issuing any final regulations, to consider the distinctive characteristics of the FHLBs when evaluating the accounting treatment with respect to the payment to Resolution Funding Corporation, the role of the combined financial statements of the twelve Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Banks.

Community Financial Institution Members (Section 208)

- Authorizes the Total Asset Requirement to be raised from \$500 million to \$1 billion.

Study of Affordable Housing Program use for Long-Term Care Facilities (Section 210)

- The Comptroller General shall conduct a study of the use of affordable housing programs of the Federal home loan banks to determine how and the extent to which such programs are used to assist long-term care facilities for low- and moderate-income individuals, and the effectiveness and adequacy of such assistance in meeting the needs of affected communities. The study shall examine the applicability of such use to the affordable housing programs required to be established by the enterprises. The Comptroller General shall submit a report to the Director of the FHFA and the Congress regarding the results of the study no later than the expiration of the 1-year period beginning on the date of the enactment of this Act.

Effective Date

- Establishes that, except as specifically provided otherwise in this title, this title shall take effect six months from the enactment of this Act.

TITLE III--TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subtitle A - Office of Federal Housing Enterprise Oversight

Abolishment of the Office of Federal Housing Enterprise Oversight (Section 301)

- Establishes that, effective at the end of the 6-month period beginning on the date of the enactment of this Act, OFHEO of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.
- Establishes continuity of employee status, use of property, and agency services.
- Establishes that suits and other actions against OFHEO will be transferred to the new Agency.

Continuation and Coordination of Certain Regulations (Section 302)

- Establishes that all regulations, orders, determinations, and resolutions that were issued, made, prescribed, or allowed to become effective by OFHEO or a court of

jurisdiction and are in effect on the date of the abolishment under section 301 of this Act, shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the FHFA until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, as the case may be, any court of competent jurisdiction, or operation of law.

Transfer and Rights of Employees of OFHEO (Section 303)

- Establishes that each employee of OFHEO transfers to FHFA employment and continues to receive benefits. The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the FHFA. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

Transfer of Property and Facilities (Section 304)

- Authorizes that upon the abolishment under section 301, all property of OFHEO transfers to the Director of the FHFA.

Subtitle B--Federal Housing Finance Board

Abolishment of the Federal Housing Finance Board (Section 321), Continuation and Coordination of Certain Regulations (Section 322), Transfer and Rights of Employees of the Federal Housing Finance Board (Section 323), Transfer of Property and Facilities (Section 324)

- These sections provide for the same transition from the Federal Housing Finance Board to FHFA with provisions similar to Sections 301-303.

Subtitle C--Department of Housing and Urban Development

Termination of Enterprise-Related Functions (Section 341)

- Requires that, no later than the expiration of the 3-month period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Director of the OFHEO, determine which employees transfer to the FHFA to maintain oversight of the enterprises. Within 6 months from the enactment of this Act, all such oversight functions are to be transferred to the new agency.
- Authorizes that the Director of the FHFA may use the property of the Secretary to perform functions which have been transferred to the Director of the FHFA for such time as is reasonable to facilitate the orderly transfer of functions under any other provision of this Act or any amendment made by this Act to any other provision of law.

- Establishes that any agency, department, or other instrumentality of the United States, and any successor, which was providing supporting services to the Secretary regarding enterprise-related functions of the Department before the termination date in connection with such functions that are transferred to the Director of the FHFA shall –
 - continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and
 - consult with any such agency to coordinate and facilitate a prompt and reasonable transition.
- Establishes that no action or other proceeding commenced by or against the Secretary in connection with the enterprise-related functions of the Department shall abate by reason of the enactment of this Act, except that the Director of the FHFA shall be substituted for the Secretary or any member thereof as a party to any such action or proceeding.

Continuation and Coordination of Certain Regulations (Section 342)

- Establishes that all regulations, orders, and determinations shall remain in effect and enforceable by or against the Director of the FHFA until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.
- Establishes that a regulation, order, or determination is described under this subsection if it was issued, made, prescribed, or allowed to become effective by the Secretary; or a court of competent jurisdiction and that relate to the enterprise-related functions of the Department, and is in effect on the termination date under section 341.

Transfer and Rights of Employees of Department of HUD (Section 343)

- Establishes that each enterprise-related employee of the Department shall be transferred to the FHFA for employment no later than the termination date under section 341.
- Establishes that an enterprise-related employee of the Department may, decline transfer to a position in the FHFA and shall be guaranteed a position in the Department with the same status, tenure, grade, and pay as that held on the day immediately preceding the date that such declination was made. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date that the transfer would otherwise have occurred, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

Transfer of Appropriations, Property, and Facilities (Section 344)

- Establishes that upon the termination date under section 341, all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from,

available to, or to be made available to the Department in connection with enterprise-related functions of the Department shall transfer to the Director of the FHFA. Unexpended funds transferred by this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

Amendments

(The following amendments were submitted subject to the pre-printing requirement in the rule for H.R. 1427 and may be offered during debate on the bill.)

Note: The Amendments summarized below were made available at Midnight this morning and below is our preliminary version of each amendment summary, we will be updating these summaries online as appropriate.

Rep. John Boozman (R-AR) #3 The amendment applies to any homebuyer who purchases a house assisted with amounts under the affordable housing fund or who gets down payment or other assistance from amounts from the fund- to make sure that these people are in the country legally. It leaves the type of verification documentation up to the Director.

Rep. Melissa Bean (D-IL) #4 Gives the regulator the authority to limit the size of growth of a GSE's portfolio only to specifically address the safety and soundness concerns with respect to the institution – the amendment would now require the regulator to assess the portfolio risk to the company themselves rather than the overall U.S. company.

Rep. Al Green (D-TX) #5 Redistributes affordable housing grants for use in disaster areas that were allotted to Louisiana and Mississippi to include both Alabama and Texas in addition to Louisiana and Mississippi.

Rep. Lee Terry (R-NE) #6 Amends the Federal Home Loan Bank Act, to give the Board of Directors of an FHLB the authority to increase the minimum number of directors from each state (represented on each of the 12 regional Federal Home Loan Banks).

Rep. Joe Donnelly (D-IN) #7 Inserts on Page 140, line 3 “except that entities providing such counseling shall not discriminate against any particular form of housing.”

Rep. Tom Price (R-GA) #8 Prevents illegal immigrants from owning or renting housing built by funds from the affordable housing fund by requiring adult occupants of that housing to establish their legal residency through the use of secure forms of identification.

Rep. Tom Price (R-GA) #9 Requires that the director of a GSE study and certify to Congress that its contributions to the affordable housing fund wouldn't contribute to its financial instability or impair its safety and soundness, not cause its undercapitalization, not prevent it from successfully completing a capital restoration plan and will not result

in increased costs to borrowers under residential mortgages before it can make any payment to the trust fund.

Rep. Pete Sessions (R-TX) #10 Requires the Director of the new GSE Regulator to provide information to mortgage originators about any added mortgage costs to consumers associated with the new Housing Fund. Originators would then have to furnish this written information to homebuyers at or before closing to qualify their mortgages for purchase, service, holding, lending on the security of or selling by the GSEs. All of the costs associated with the new regulatory requirement created by this amendment would be paid for with funds from the new Housing Fund. *The amendment's purpose is to provide transparency to the purchasers of conforming mortgages about any added costs created by this new, multi-billion dollar Affordable Housing Fund.

Rep. Roy Blunt (R-MO) #11 Ensures that grants made under the affordable housing fund fall under the reporting requirements of Davis-Blunt database bill (P.L. 109-282). The 109th Congress enacted this legislation to increase budget accountability and transparency by establishing a public database to track federal grants and contracts.

Reps. Spencer Bachus (R-AL)/ Judy Biggert (R-IL) #12 Strikes the Affordable Housing Trust Fund.

Rep. Susan Davis (D-CA) #13 Inserts on line 10 of page 88, the following language: "Such foregoing limitations, as increased pursuant to the preceding sentence, shall for the purposes of section 3703(a)(1) of title 38, United States Code be considered as the Freddie Mac conforming loan limit limitation determined under this paragraph with respect to the applicable areas, mortgages, and property sizes.

Rep. Patrick McHenry (R-NC) #14 Would build on an amendment that Rep. McHenry offered and passed in FS Committee mark-up that would require a GAO study be conducted on the effects the affordable housing fund will have on the availability and affordability of credit for homebuyers, and the extent to which the costs are passed onto the homebuyers. The amendment would suspend the assessment of Freddie or Fannie if the Director makes a determination (based on the GAO report) that the assessment leads to increased mortgage costs for consumers.

Rep. Paul Kanjorski (D-PA) #15 Clarifies the Director's authority to determine the appropriate size of the board of directors of the Federal National Mortgage Association between 7 and 15 members.

Rep. Tom Feeney (R-FL) #16 Leaves the Affordable Housing Trust Fund, for the first year (2007), as being distributed for areas affected by Hurricane Katrina or Rita and for the remaining years of the fund redirects the money to HUD to be used for homeless veterans housing. Under that program the funds will be distributed to public entities and allocated based on the formula used for the Continuum of Care competition of the Department of Housing and Urban Development.

Rep. Scott Garrett (R-NJ) #17 Inserts new language requiring GSEs to limit their retained portfolios to mortgages and mortgage backed securities that exclusively support affordable housing, and particularly mortgages extended to households having incomes below the median income for the area in which the property subject to the mortgage is located. Additionally, it would limit GSEs to purchasing only mortgage-related assets that the Director determines are necessary for the enterprise to “maintain a liquid secondary mortgage market in a manner that cannot be achieved through the activities described in subsection (a) [above] and are consistent with the public interest.”

Rep. Scott Garrett (R-NJ) #18 Inserts new language prohibiting the use of appropriated federal funds to influence a Member of Congress. In addition, the amendment clarifies that directors, officers, employees, stockholders, and agents of GSEs are not considered employees of the United States.

Rep. John Doolittle (R-CA) #19 Prohibits all three mortgage lending government-sponsored enterprises (GSEs), Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, from obtaining primary residential mortgages being granted to any person who does not have a valid Social Security number.

Rep. Michael McCaul (R-TX) #20 Clarifies that monies going into any successor trust fund (as provided in section “o”) will be subject to the same prohibited uses as the fund being created in the bill.

Rep. Ruben Hinojosa (D-TX) #21 Permits the Director, at the request of a State, to waive the requirement that homebuyers attend in-person financial management counseling before receiving affordable housing grants, and allows the homebuyers to receive the counseling through alternate forms such as online, or over the phone.

Rep. Paul Kanjorski (D-PA) #22 Clarifies that both the Federal Housing Enterprise Board and the Federal Home Loan Bank may recommend individuals for selection as independent directors at the Federal Home Loan Bank.

Rep. Scott Garrett (R-NJ) #23 Prohibits GSEs from treating the costs of making allocations to the affordable housing fund as either regular business expenses or redirecting the costs through increased fees, decreased premiums, or any other manner.

Rep. Scott Garrett (R-NJ) #24 Amendment in the nature of the substitute to restore the bill to the language that was reported from committee.

Rep. John Doolittle (R-CA) #25 Makes economically disadvantaged counties that receive payments under the Secure Rural Schools and Community Self-Determination Act eligible to receive Affordable Housing fund grants.

Rep. Earl Blumenauer (D-OR) #26 Requires GSEs to take energy efficiency and “location efficiency” into account when evaluating mortgages for one to four family residences.

Rep. Peter Roskam (R-IL) #27 Limits the amount of money required to be allocated to the affordable housing fund to the amount allocated in the previous year when the government has an on-budget (excluding social security) deficit and an off-budget (including social security) surplus.

Rep. Jeb Hensarling (R-TX) #28 Adds a new section to the bill to prevent any group receiving funds from the Affordable Housing Fund from using any money either from the Affordable Housing Fund or from another source to engage in political activities as a condition of participation.

Rep. Jeb Hensarling (R-TX) #29 Requires the new regulator to suspend GSE contributions to the Affordable Housing Fund for the three reasons listed in the base bill (contributing to their financial instability, under-capitalization, or jeopardizing their capital restoration plan) as well as if they contributing to an increase in the cost of mortgage rates to homebuyers.

Rep. Jeb Hensarling (R-TX) #30 Strikes the “Affordable Housing Trust Fund” budgetary placeholder language provided which allows money from the Affordable Housing Fund to be later converted into a yet-uncreated off-budget housing Trust Fund.

Rep. Richard Baker (R-LA) #31 Reduces the number of member of the Board of the Federal Housing Enterprise from 5 to 3, removing 2 positions that are appointed by the President to 4 year terms.

Rep. Jeb Hensarling (R-TX) #32 Strikes the High Cost Area increases in Section 133 to the Conforming Loan Limit.

Rep. Gary Miller (R-CA) #33 Strikes the securitization conditions on the high-cost areas provision and strikes the study and determination relating to securitization.

Rep. Kevin Brady (R-TX) #34 Redistributes the affordable housing grants for use in disaster areas from a ratio of 75% for Louisiana and 25% for Mississippi to create 10% for Texas by taking 5% each from the allotment for Louisiana and Mississippi.

Rep. Steve King (R-IA) #35 Prohibits the Director from offering homeownership assistance to any applicants that cannot verify their identity with one of the forms of identification specified in the REAL ID Act of 2005.

Rep. Steve King (R-IA) #36 Strikes “Diversity in Agency Workforce” hiring criteria and replaces it with language requiring agencies to hire “strictly on the merits of the applicants.”

Additional Views

The Administration supports House passage of H.R. 1427. The Administration supports legislation to create a stronger and more effective regulatory regime for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks ("housing government-sponsored enterprises" or "housing GSEs"). Although the Administration objects to several provisions of H.R. 1427, the bill does include elements that are essential for proper regulatory oversight of the housing GSEs and for protecting the safety and soundness of the housing finance system and the broader financial system. As a result, the Administration supports House passage of H.R. 1427 as reported by the House Financial Services Committee, and looks forward to working with Congress to further strengthen the legislation.

The regulatory regime envisioned by H.R. 1427 is an improvement over current law. The bill enhances the regulatory oversight of the housing GSEs by establishing a new Federal Housing Finance Agency (FHFA) and providing this new housing GSE regulator with: (1) greater authority to set capital standards; (2) authority to place a troubled GSE into receivership (mandatory in some cases); and (3) authority to approve new activities and oversee mission compliance. In addition, H.R. 1427 grants the new housing GSE regulator specific authority to regulate the retained mortgage portfolios of Fannie Mae and Freddie Mac. This authority is grounded in considerations regarding the mission of and safe and sound operations of Fannie Mae and Freddie Mac, but would also authorize the new regulator to consider all potential risks posed by the portfolios. This provision helps to address the systemic risk that Fannie Mae and Freddie Mac pose to our financial system and ensures that they will better address their core affordable housing mission. Any efforts to weaken the existing portfolio language contained in H.R. 1427 will threaten the Administration's support for this bill.

The Administration strongly believes that the housing GSEs should be focused on their core housing mission, particularly with respect to low-income and first-time homebuyers. The Administration opposes provisions that would increase the conforming loan limit, thus diluting the housing GSEs' commitment to low-income homebuyers.

The Administration does not believe that the Federal government should appoint directors to the boards of the housing GSEs. The Administration opposes this requirement because it is inconsistent with current corporate governance standards and reinforces the misperception that the housing GSEs are backed by the Federal government. Also, the Administration believes that the Federal Housing Enterprise Board should be comprised only of the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the FHFA Director. The purpose of the Board is to advise the FHFA Director with respect to overall strategies and policies in carrying out the Director's duties; it is not intended to have any direct authority over the new regulator.

While the Administration strongly supports Federal assistance to families that lack the means to afford adequate housing, the Administration has concerns about section 139 of H.R. 1427. This section could create an undue and counterproductive reliance on Fannie Mae and Freddie Mac by tying the potentially unlimited growth of their affordable

housing funds to the annual amount of their mortgage business. Moreover, the Administration remains concerned that the affordable housing funds not be susceptible to political influences that could compromise the goals of assisting as many low income families in need as possible. The Administration does not support any provisions that would divert the funds to a new, separate housing trust fund.

The Administration remains committed to bringing real reform to the housing GSEs and looks forward to continuing to work with Congress to ensure that the needed reforms are part of any final legislation.

Cost

The Congressional Budget Office (CBO) estimates that “FHFA would be an independent agency within the federal government with the authority to oversee the safety, soundness, and mission of the housing GSEs. Under H.R. 1427, FHFA would be authorized to collect fees from the GSEs and to spend such fees to pay for its operating costs. Because the GSEs would be compelled by the government to pay those fees, the amounts collected and spent would be recorded on the federal budget as governmental revenues and outlays, respectively. CBO expects that FHFA would become operational midway through fiscal year 2008, that its operations would cost about \$50 million in 2008, and that fees collected by the agency would cover that spending.

The legislation also would require Fannie Mae and Freddie Mac to contribute amounts equal to 1.2 basis points on their average total mortgage portfolios (that is, 1.2 cents per \$100 of the value of their mortgage portfolios) from the previous year to a new affordable housing fund created by the bill. Those contributions would occur over calendar years 2007 through 2011 and would be used for three purposes. First, each year, 25 percent of the funds deposited in the affordable housing fund would be used to pay some of the interest on the Resolution Funding Corporation (REF CORP) bonds that would otherwise be paid by the U.S. Treasury. Second, in the first year of the fund's operation, the remaining 75 percent of the funds would be used to fund the reconstruction of housing in areas of Louisiana and Mississippi affected by Hurricanes Katrina and Rita. In subsequent years, that remaining 75 percent would be used to provide grants to states and Indian tribes to support home ownership and rental housing among low-income households and investment in public infrastructure associated with housing activities.

As a result of the fees that would be collected and spent by FHFA and the transactions of the affordable housing fund, CBO estimates that enacting this legislation would increase revenues and direct spending by \$2.7 billion over the 2008-2012 period and by \$3.3 billion over the 2008-2017 period.

Finally, CBO estimates that implementing H.R. 1427 would result in net savings of about \$22 million in discretionary spending over the next five years, assuming that appropriations are reduced to reflect the changes in regulatory structure that would be established in the legislation. Those savings would result from a reduction in the

regulatory responsibilities of the Department of Housing and Urban Development (HUD).

H.R. 1427 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the aggregate costs to state, local, and tribal governments would be minimal and would not exceed the threshold established in that act (\$66 million in 2007, adjusted annually for inflation). The bill also would authorize formula grants to support affordable housing programs, which would benefit state, local, and tribal governments.

H.R. 1427 would impose several private-sector mandates, as defined in UMRA, on Fannie Mae, Freddie Mac, and the FHLBs. CBO estimates that the aggregate direct cost of those mandates would exceed the annual threshold established by UMRA (\$131 million in 2007, adjusted annually for inflation) in fiscal years 2008 through 2011.”

[CBO Cost Estimate on H.R. 1427](#)

Staff Contact

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